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BY MJ

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11 Attorneys for Defendant
12 CITY OF LAS VEGAS

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

11 ANN CHRZANOWSKI,

12 Plaintiff,

13 vs.

CASE NO. CV-S-05-0418-RLH-PAL

14 JUDGE GEORGE ASSAD, CITY OF LAS
15 VEGAS, a political subdivision of the state
16 of Nevada; MARSHALL R. SAAVEDRA,
John Does, I-X, each individually and in
their official capacities,

17 Defendants.

18
19 **DEFENDANT CITY OF LAS VEGAS'**
REPLY TO OPPOSITION TO MOTION TO DISMISS

20 Defendant CITY OF LAS VEGAS (hereinafter "CITY"), through its attorneys, BRADFORD
21 R. JERBIC, City Attorney, by PHILIP R. BYRNES, Deputy City Attorney, replies to Plaintiff's
22 Opposition to Motion to Dismiss as follows:

23 Under the allegations of her Complaint, Plaintiff alleges she was taken into custody by a
24 court marshal at the direction of a Municipal Judge. She attempts to hold the CITY liable based
25 upon the actions of the marshal. As discussed in, the City's original motion, the CITY cannot be
26 held liable under these circumstances.

27 In an attempt to avoid dismissal, Plaintiff attempts to raise a factual dispute regarding "the
28 Judge's position on Defendant Saavedra's conduct." Opposition to Motion to Dismiss at 2. This

1 matter is not raised in the Complaint and Plaintiff has not offered any evidence by affidavit or
2 otherwise, concerning this point pursuant to Fed.R.Civ.P. 12(b).

3 Plaintiffs unsupported allegations in their points and authorities are insufficient to avoid
4 dismissal. In *Schneider v. California Dept. of Corrections*, 151 F.3d 1194, 1197, n1 (9th Cir.
5 1998), the Ninth Circuit stated:

6 Perhaps recognizing that their complaint was (at best)
7 ambiguous, the inmates insisted in their memorandum to the district
court opposing the State's motion to dismiss that their ITAs do
indeed earn interest but that the interest is credited to the Inmate
Welfare Fund rather than to them as individual prisoners. **The
"new" allegations contained in the inmates' opposition motion,
however, are irrelevant for Rule 12(b)(6) purposes. In
determining the propriety of a Rule 12(b)(6) dismissal, a court
may not look beyond the complaint to a plaintiff's moving
papers, such as a memorandum in opposition to a defendant's
motion to dismiss.** See *Harrell v. United States*, 13 F.3d 232, 236
(7th Cir.1993); see also 2 Moore's Federal Practice, § 12.34[2]
(Matthew Bender 3d ed.) ("The court may not ... take into account
additional facts asserted in a memorandum opposing the motion to
dismiss, because such memoranda do not constitute pleadings under
Rule 7(a)."). The focus of any Rule 12(b)(6) dismissal--both in the
trial court and on appeal--is the complaint. (Emphasis added.)

15 The Court should disregard the bare assertions in Plaintiff's points and authorities.

16 The factual allegations in Plaintiff's Complaint do not support a finding against the CITY.

17 The Motion to Dismiss should be granted.

18 DATED this 21st day of October, 2005.

19 BRADFORD R. JERBIC
20 City Attorney

21 By

22 PHILIP R. BYRNES
23 Deputy City Attorney
24 Nevada Bar No. 0166
25 400 E. Stewart Avenue 9th Floor
26 Las Vegas, Nevada 89101
27 Attorneys for Defendant CITY OF
28 LAS VEGAS

CERTIFICATE OF MAILING

2 I hereby certify that on this 21st day of October, 2005, I placed in the United States
3 Mail at Las Vegas, Nevada, postage prepaid, a copy of the above and foregoing Defendant City
4 of Las Vegas' Reply to Opposition to Motion to Dismiss, addressed as follows:

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An Employee of the City of Las Vegas

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